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in vogue among boys, of swapping pennies, and like many another urchin supposed that he was getting rich by the process. We frankly confess that as compared with this plan of the Minnesota superintendent, who by the way is a "front pew" Christian, that of the Massachusetts deacon is to be preferred, who proposes that we get up a war occasionally and kill off the surplus population. This would certainly be a more expeditious method of reducing surplus labor and production. Seriously, if these "front pew Christians" would study their New Testaments a little more sincerely and try to get a little more of the truth and particularly of the spirit of Him whom they profess to follow, they would be able to suggest a cure for the "hard times" which would be less monstrous and irrational.

The Norwegian Parliament voted the sum of six hundred and sixty dollars to pay the expenses of three of its members who attended the Interparliamentary Conference at Buda-Pesth. The Hungarian Parliament, in addition to placing its Upper Chamber and its Committee Rooms at the disposal of the Conference also voted the sum of twelve thousand florins (about $2500) towards its expenses. These facts need no comment.

Miss Alice M. Douglas has prepared for the Peace Department of the W. C. T. U. a program for Peace Sunday, the third Sunday in December. The program is arranged so that both children and older people can take part in it. It can also easily be modified so as to suit the needs of special congregations or Sunday schools which observe the day. Ministers who preach on the subject in the forenoon will find this program an excellent basis for an evening service. The program may be had by addressing Mrs. H. J. Bailey, the Department Superintendent, at Winthrop Centre, Maine.

The Swiss Peace Society now has branches in sixteen different cities and towns of Switzerland. Mr. Franz Wirth of Frankfort-on-the-Main, one of the earliest peace-workers in Germany, has recently made a lecturing tour in the Palatinate. Several of the newspapers of South Germany have spoken with commendation of his addresses. A popular edition of the Baroness Von Suttner's "Lay Down Your Arms" has been published in Germany at one mark per copy.

This is a year of political platforms, no less than eight having been constructed during the summer. They are made of all sorts of timber, except possibly the best. Industrial arbitration got nailed into several of them, but international arbitration was left out in the lumber-yard by all of them except that constructed at Indianapolis on the 3d of September by the National Democrats. This little plank got into that platform: "We favor arbitration in the settlement of international disputes." There isn't much of it, but it is a sound bit of timber.

THE ARBITRATION DISCUSSION; FRIENDLY CRITICISMS.

BY CEPHAS BRAINERD.

The ADVOCATE OF PEACE for July contains references to the Supreme Court of the United States as showing, in its organization and history, the feasibility of a permanent tribunal for the disposition of international differences.

In my judgment there is not only nothing whatever in the supposed analogy helpful to the discussion now proceeding, but on the contrary the introduction of this matter is prejudicial to the cause. The men who are now to dispose of this subject by the negotiation of arbitration treaties, who are to settle the rules under which permanent arbitrations must proceed, may well say: "Here the people who are urging this method of adjustment misapprehend the situation. They seem to think a court like the Supreme Court of the United States can be established. Nothing of the kind can be done; they are in pursuit of an impossibility; they are talking without reason; we must discount this enthusiasm; let us adjourn this exchange of dispatches, this diplomatic debate till the public mind really apprehends some of the conditions under which a tribunal must be created if it is really to have a useful existence."

It can hardly be said that antecedent to the adoption of the Constitution the thirteen colonies which are termed "states" in that instrument, possessed the power to adjust controversies between each other, or between them and the then existing nations, as that power is possessed by independent states. If they had any such power it was surrendered in the Ninth Article of the instrument of Confederation which provides that the United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting or which may hereafter arise between two or more states concerning boundary, jurisdiction or any other cause whatever. This article does provide a plan for the adjustment of the disputes and differences, which may, in view of the present discussion, be called a plan for arbitration, and not a bad plan either. Then finally came the provision of the Constitution, which was, in no sense, in the nature of a treaty between sovereign powers and possessed none of the elements of a treaty, but it is the foundation of government common to all the people of the United States, ratified by the people, and constitutes what was termed by Mr. Justice Baldwin, in the Rhode Island Case, an express grant of original jurisdiction. The whole body of the people rendered that ordinance effective by voting as individuals, and in it they prescribed, by paramount law, everywhere pervasive, a Supreme Court having jurisdiction of all cases and questions arising under that Constitution, and under the laws as passed by Congress in accordance with it.

The States were stripped, as respects foreign nations, of every attribute or element of sovereignty. Hence it cannot properly be said that "the Supreme Court has taken the place of war in the settlement of controversies in this continent arising between more than forty independent states."

The Constitution, Article III., Section 2, conferring jurisdiction on the Supreme Court, does not contemplate the disposition, as respects the States of the United States, of the questions which arise between independent nations. Those are what are called political, not legal questions.

Under the Constitution the jurisdiction of the Supreme Court extends to all questions in law or equity arising under the Constitution to which the United States shall be a party or between two or more states, or between a state and citizens of another state; and the decisions of the Supreme Court are uniform to the effect that the cases contemplated by the Constitution in the provision referred to, must be those of an ordinary judicial nature such as may occur between individuals. So a suit by the States of Georgia and Mississippi to prevent the enforcement of the "Act to provide for the more efficient government of the Rebel States" was dismissed on the ground that the appeal did not present a question either at law or in equity, but a political question.

So jurisdiction was refused in the Cherokee case on the ground that no question at law or in equity was presented.

Jurisdiction was taken in the Rhode Island Case because a question of boundary merely was presented, and not a political question, a question which, antecedent to the Revolution, would have been settled by the King in council.

In the great case of Lord Baltimore, Lord Hardwicke went upon the ground that the relief sought being a determination of the boundary between Pennsylvania and Maryland was in that regard but an ordinary case in the Court of Chancery, such as might at any time arise.

No doubt the Supreme Court succeeded as the ultimate tribunal, by virtue of the provisions of the Constitution, to all that class of questions which might have arisen between the several colonies and which would have been cognizable either before the King in council, or in the Courts of England; but how absurd it is, in this connection, to suggest that prior to the Constitution, the English government would have permitted war between the colonies upon any question which might arise, as for instance, a question of boundary. Not one of the colonies had a right to wage war upon the other.

The Constitution established, by the act of the whole people, a government with all the necessary power, which government provided for the adjustment, by a court which was, and is, an essential part of the national organization and which has the power, under and in pursuance of the forms of law as then existing, or thereafter to be established in accordance with its terms, of every controversy arising under it. Its process is compulsory, and its judgments may be enforced by all the national power. It proceeds by known and legally recognized methods, is informed by evidence taken under known legal rules. In short, the Supreme Court of the United States is a department of a national government created by the people and operating on legal rules established by the nation, the unquestioned superior of all within the jurisdiction of the national power.

In fact, when it is said that the Supreme Court is a National Tribunal, while the advocates of peace are now seeking, and with the most hopeful prospects of success, an International Tribunal, the talk about an analogy is at an end.

Nor do I think it wise or helpful towards the result sought to be attained, to indulge in criticism in regard to the Geneva or the Halifax awards, or the manner of the distribution of the former.

It is perhaps true, in regard to the amount of the Halifax award, that it was in excess of the damages which were suffered; it has been said that evidence, fictitious in its nature, was presented before the commissioners which was the foundation of their computations. Suffice it to say, that it is like many other cases where the losing party may be dissatisfied with the determination of the Court and yet has to pay the final judgment; however now no complaint can properly be made.

In regard to the Geneva award, the discussions of the arbitrators as to the amount have never been disclosed; they sat behind closed doors. How the Commissioners reached the final amount — by what method of computation — it is probable the public will never know. It is, however, known that estimates were presented on the part of the United States — made by acute, capable and honest men and that estimates were also presented on the part of Great Britain, by men equally acute, capable and honest. These were considered by the arbitrators behind closed doors and Mr. Staempfli made up an estimate of a round sum of $12,000,000 to which he added interest, making a gross sum of $17,825,000. The estimate made by Sir Alexander Cockburn was $10,121,044 exclusive of interest. These two arbitrators therefore differed something like $1,800,000. The secret conferences then proceeded and the award was made $15,500,000 gross.

The specific language of the award ought to be noted. It was the above sum in gold "as the indemnity to be paid by Great Britain to the United States for the satisfaction of *all the claims referred to the consideration of the tribunal*," and that sum was paid.

The question then arose here as to the distribution of the award. The points involved were the subject of prolonged discussions for several years in both Houses of Congress, and of elaborate and extended debate before the Committees of the two Houses and in the public press; and finally, as was shown in the ADVOCATE OF PEACE several years ago, the money was paid out by the government to the persons whom the court had adjudged after full proof to be rightful claimants in regard to the award. A great deal more money than the original amount was paid, for pending the discussion the award had been invested in government bonds and the interest was treated as a part of the fund.

Congress may have been right or it may have been wrong in disposing of the award, but it was distributed to those whom Congress deemed rightfully entitled to it under the bills which became law by the signature of the President of the United States. There is no reasonable ground for the suggestion that the government got more money than it knew what to do with, or that it made an improper distribution.

It is true that some fault finding members of the House of Commons sought to raise a question in regard to the distribution of the award by our government. Mr. Gladstone, then Premier — and Premier when the treaty was negotiated, as well as when the award was made — when interrogated upon the subject, stated, in his place in the House, "No claims of individuals have been submitted to arbitration in relation to the Alabama. What was submitted to arbitration was entirely a question between the two governments." So the British Government declined to enter into the question of distribution.

So far as the parties to that arbitration were concerned, the award belonged absolutely to the United States, and its distribution was made by Congress in exercise of its governmental rights, not to claimants who

had *legal* rights in regard to the fund, for there were none. In the language of the English Courts (2 Swanston 613) "It is donation, not restitution of a former right, but from a new fund, belonging to an independent authority, a grant to the sufferer for what he has lost."

It is true there is a considerable series of precedents in favor of the adjustment of international disputes by arbitration; some have value, others are quite destitute of value. The proceedings under Mr. Jay's treaty where there were four different controversies, were, on the whole, satisfactory so far as they went. Those under the treaty of Washington, where there were four arbitrations, were, on the whole, satisfactory. The result of the proceedings under the Behring Sea Commission were not perhaps satisfactory to all parties. In that instance there was no settlement at the outset of the basis upon which the arbitration was to determine the questions at issue; but however that may be, no appeal either to a national or state tribunal is certain to reach conclusions which will be satisfactory to all sides.

But it is idle to call things precedents which are not such. The fact that France, the United States or Great Britain have, by Parliamentary action, recommended treaties for the establishment of tribunals of arbitration, constitutes no precedent. An agreement between any number of the members of the different Parliamentary bodies of independent nations in favor of arbitration does not constitute a precedent. The framing of rules by important bodies, public or private, under which such tribunals may be established, and may carry on proceedings, do not establish a precedent; but all these things do indicate a desire on the part of thinking men and women to have the experiment of a permanent tribunal tried, and that is all.

Any one reading the correspondence between our own country and Great Britain just issued, will perceive the vast difference between a public discussion of the idea which the ADVOCATE OF PEACE has done so much to promote and the class of discussions which must finally be resorted to if a real agreement is had between two great nations. Sentiment is all very well; love is excellent; the hurrah of the crowd is extremely helpful at times though not always; but now the debate has reached a point where those who deal with realities and not with fictions are, by all means, the most helpful in creating the thing which all true men and true women desire.

New York City.

INTERNATIONAL LAW AND INTERNATIONAL ARBITRATION.

LORD CHIEF JUSTICE RUSSELL'S ADDRESS BEFORE THE AMERICAN BAR ASSOCIATION.

SARATOGA, N. Y., August 20, 1896.

(*Concluded from Sept. Number.*)

THE ENGLISH AND AMERICAN SCHOOL.

Notwithstanding all this there is a marked agreement between English and American writers as to the manner in which international law is treated. They belong to the same school—a school distinctly different from that of writers on the continent of Europe. The essential difference consists in this: Whereas in the latter what I shall call the ethical and metaphysical treatment is followed, in the former, while not ignoring the important part which ethics play in the consideration of what international law ought to be, its writers for the most part carefully distinguish between what is, in fact, international law from their views of what the law ought to be. Their treatment is mainly historical.

By most Continental writers, and by none more than Hautefeuille, what is and what he thinks ought to be law, theory and fact, law and so-called rules of nature and of right, are mixed up in a way at once confusing and misleading.

One distinguished English writer indeed, the late Sir Henry Maine, thought that he had discovered a fundamental difference between English and American jurists as to the view taken of the obligation of international law.

His opinion was based on the judgments of the English Judges in the celebrated "Franconia" case, in which it was held that the English courts had no jurisdiction to try a foreigner for a crime committed on the high seas, although within a marine league from the British coast. The case was decided in 1876, and is reported in the second volume of the Law Reports, Exchequer Division, page 63. The facts were these: The defendant was Captain Keyn, a German subject, in charge as captain of the German steamship Franconia. When off Dover the Franconia, at a point within two and a half miles of the beach, ran into and sank a British steamer, the Strathclyde, thereby causing loss of life. The facts were such as to constitute, according to English law, the crime of manslaughter, of which the defendant was found guilty by the jury, but the learned Judge who tried the case at the Central Criminal Court reserved for further consideration by the Court for Crown Cases Reserved the question whether the Central Criminal Court had jurisdiction over the defendant, a foreigner, in respect of an offence committed by him on the high seas, but within a marine league of the shore. All the members of the court were of opinion that the chief criminal courts—that is to say, the Courts of Assize and the Central Criminal Court—were clothed with jurisdiction to administer justice in the bodies of counties, or, in other words, in English territory; and that from the time of Henry VIII a court of special commissioners, and, later, the Central Criminal Court (in which the defendant had been tried), had been invested by statute with the jurisdiction previously exercised by the Lord High Admiral on the high seas. But the majority held that the marine league belt was not part of the territory of England, and, therefore, not within the bodies of counties, and also that the Admiral had had no jurisdiction over foreigners on the high seas. The minority, on the other hand, held that the marine belt was part of the territory of England and that the Admiral had had jurisdiction over foreigners within those limits.

While I do not say that I should have arrived at the conclusions of historical fact of the majority, I am by no means clear that the judges of the United States, accepting the same data as did the majority of the English Judges, would not have decided in the same way. But however this may be, the views of the majority do not seem to me to warrant the assumption of Sir Henry Maine that the case fundamentally affects the view taken of the authority of international law.

What it does incidentally reveal is a constitutional difference between the United States and Great Britain as to the methods by which the municipal courts ac-